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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,081	07/25/2003	Ralph Simpson	687.06	3510

7590 07/31/2006

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EXAMINER

DONNELLY, JEROME W

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/628,081	Applicant(s) SIMPSON ET AL.	
	Examiner Jerome W. Donnelly	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 3/7/66
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 3-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1 and 3-7 is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) 1 and 3-7 is/are objected to.
- 8) ☐ Claim(s) 1 and 3-7 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. .
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

JEROME DONNELLY
PRIMARY EXAMINER



Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u> </u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u> </u> | 6) <input type="checkbox"/> Other: <u> </u> |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nurge.

Nurge discloses a device comprising: an elastic cord (30) having ends and handles (36) connected to said ends, padding (12) connecting to elastic cords (30) through belt (elements (18, 40), buckle means (16) for securing the ends of the belt together, O-rings secured to the belt and Karabiner (34) capable of connecting said handle to said belt through element (32).

In regard to claim 3, padding (24) is a non-slip material.

In regard to claims 1 and 3 and the resilient material being tubing, the examiner notes that it is notoriously well known in the art to manufacture resilient cord members of surgical tubing.

Claim 1-7 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, "the third tubular section" is claimed as being spaced apart from itself. Correction is required.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hinds in view of McBride.

Hinds disclose the device of claim 4 as, claimed. The applicant is reminded that although the applicants device is disclosed as being three separate sections, within the specification. The

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applicant has not claimed in his claims that the foam material is three distinct separate sections. In view of applicants broadness of the claims the examiner must apply the prior art of Hinds and note that the, pad 1 as broadly claim has sections.

Hinds does not disclose his pad as being foam.

McBride discloses his device as being manufacture of foam (element, 20).

Given the above the examiner notes that it is known and obvious to manufacture the device of Hinds wherein his padding member is (rubberized) foam.

Claim is rejected under 35 U.S.C. 103(a) as being unpatentable over Hinds in view of McBride and Wilkinson.

The examiner notes that it would have been obvious to one of ordinary skill in the art to provide a neck piece/strap (18) to the device of Hinds as shown by Wilkinson so as allow a user to perform leg exercises as shown in figs. 1-6 of Wilkinson.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hinds in view of McBride and further in view of Bosch.

The examiner notes that it would have been obvious to one of ordinary skill in the art to mount the device of Hinds, specifically the tubular member on a belt, in view of the belt mounted tubular member of Bosch.

The examiner further draws the applicant's attention to the ring member and Karabiner (14) of Bosch Fig. 1.

As to a buckle means the examiner notes that buckle means are obvious in view of fastener (10) of Bosch.

In regard to claim 7, the claims are so broad so as to read on pockets (11).

Claim 7 recites the limitation "belt" in line 3. There is insufficient antecedent basis for this limitation in the claim.

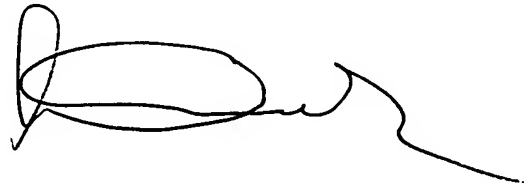
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Jerome Donnelly', with a long horizontal flourish extending to the right.